

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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LAUSTEVEION JOHNSON

Plaintiff,

v.

ELY STATE PRISON, *et al.*,

Defendants.

Case No. 3:14-cv-00122-MMD-WGC

ORDER ACCEPTING AND ADOPTING  
REPORT AND RECOMMENDATION  
OF MAGISTRATE JUDGE  
WILLIAM G. COBB

**I. SUMMARY**

Before the Court is the Report and Recommendation of United States Magistrate Judge William G. Cobb (dkt. no. 76) (“R&R” or “Recommendation”) recommending the Court grant Defendants’ Motion for Summary Judgment (dkt. no. 57) only insofar as Plaintiff seeks damages against Defendants in their official capacities, and deny Plaintiff’s Motion for Summary Judgment (dkt. no. 62). An objection to the R&R was timely filed by Defendants (“Objection”). (Dkt. no. 81.) Upon reviewing the Recommendation and underlying briefs, this Court finds good cause to adopt the Magistrate Judge’s Recommendation.<sup>1</sup> Defendants’ Motion for Summary Judgment is granted in part and denied in part. Plaintiff’s Motion for Summary Judgment is denied.

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<sup>1</sup>As set out in this Order, the Court agrees with the Magistrate Judge’s conclusions about the parties’ respective motions, but disagrees with portions of the analysis.

1       **II. BACKGROUND**

2                  The relevant background is set out in Judge Cobb's R&R, which the Court adopts.  
3 (Dkt. no. 76 at 1-3.)

4       **III. LEGAL STANDARD**

5                  This Court "may accept, reject, or modify, in whole or in part, the findings or  
6 recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where a party  
7 timely objects to a magistrate judge's report and recommendation, then the court is  
8 required to "make a *de novo* determination of those portions of the [report and  
9 recommendation] to which objection is made." 28 U.S.C. § 636(b)(1). Where a party  
10 fails to object, however, the court is not required to conduct "any review at all . . . of any  
11 issue that is not the subject of an objection." *Thomas v. Arn*, 474 U.S. 140, 149 (1985).  
12 Indeed, the Ninth Circuit has recognized that a district court is not required to review a  
13 magistrate judge's report and recommendation where no objections have been filed. See  
14 *United States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard  
15 of review employed by the district court when reviewing a report and recommendation to  
16 which no objections were made); see also *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219,  
17 1226 (D. Ariz. 2003) (reading the Ninth Circuit's decision in *Reyna-Tapia* as adopting the  
18 view that district courts are not required to review "any issue that is not the subject of an  
19 objection."). Thus, if there is no objection to a magistrate judge's recommendation, then  
20 the court may accept the recommendation without review. See, e.g., *Johnstone*, 263 F.  
21 Supp. 2d at 1226 (accepting, without review, a magistrate judge's recommendation to  
22 which no objection was filed).

23                  "The purpose of summary judgment is to avoid unnecessary trials when there is  
24 no dispute as to the facts before the court. *Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.*,  
25 18 F.3d 1468, 1471 (9th Cir. 1994)." Summary judgment is appropriate when "the  
26 movant shows that there is no genuine dispute as to any material fact and the movant is  
27 entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); see *Celotex Corp. v.*  
28 *Catrett*, 477 U.S. 317, 322-23 (1986). An issue is "genuine" if there is a sufficient

1 evidentiary basis on which a reasonable fact-finder could find for the nonmoving party  
2 and a dispute is “material” if it could affect the outcome of the suit under the governing  
3 law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986). Where reasonable  
4 minds could differ on the material facts at issue, however, summary judgment is not  
5 appropriate. *Nw. Motorcycle Ass’n*, 18 F.3d at 1472. “The amount of evidence necessary  
6 to raise a genuine issue of material fact is enough ‘to require a jury or judge to resolve  
7 the parties’ differing versions of the truth at trial.’” *Aydin Corp. v. Loral Corp.*, 718 F.2d  
8 897, 902 (9th Cir. 1983) (quoting *First Nat'l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S.  
9 253, 288-89 (1968)). In evaluating a summary judgment motion, a court views all facts  
10 and draws all inferences in the light most favorable to the nonmoving party. *Kaiser  
11 Cement Corp. v. Fishbach & Moore, Inc.*, 793 F.2d 1100, 1103 (9th Cir. 1986).

12 The moving party bears the burden of showing that there are no genuine issues  
13 of material fact. *Zoslaw v. MCA Distrib. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982). “In  
14 order to carry its burden of production, the moving party must either produce evidence  
15 negating an essential element of the nonmoving party’s claim or defense or show that  
16 the nonmoving party does not have enough evidence of an essential element to carry its  
17 ultimate burden of persuasion at trial.” *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210  
18 F.3d 1099, 1102 (9th Cir. 2000). Once the moving party satisfies Rule 56’s requirements,  
19 the burden shifts to the party resisting the motion to “set forth specific facts showing that  
20 there is a genuine issue for trial.” *Anderson*, 477 U.S. at 256. The nonmoving party “may  
21 not rely on denials in the pleadings but must produce specific evidence, through  
22 affidavits or admissible discovery material, to show that the dispute exists,” *Bhan v. NME  
23 Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991), and “must do more than simply show  
24 that there is some metaphysical doubt as to the material facts.” *Orr v. Bank of Am., NT &  
25 SA*, 285 F.3d 764, 783 (9th Cir. 2002) (citation and internal quotation marks omitted).  
26 “The mere existence of a scintilla of evidence in support of the plaintiff’s position will be  
27 insufficient.” *Anderson*, 477 U.S. at 252.

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1     **IV. DISCUSSION**

2                 In light of Defendants' Objection, the Court has engaged in a *de novo* review to  
3 determine whether to adopt Magistrate Judge Cobb's Recommendation. Defendants  
4 specifically object to the Magistrate Judge's conclusions about Johnson's free exercise  
5 claim in count I of his Complaint. According to Defendants, the Magistrate Judge failed to  
6 give proper deference to prison officials, erred in concluding that factual issues remained  
7 concerning the rational connection between the security measures on chapel services  
8 and safety and security at the jail, and erred in concluding that factual issues remained  
9 concerning whether Johnson was provided alternate means of exercising his religion.  
10 (Dkt. no. 81 at 2.)

11                 Johnson's free exercise claim is premised on the fact that he, a practicing Muslim,  
12 was prevented from attending Jum'ah for three years while a prisoner at Ely State Prison  
13 ("ESP").

14                 Prisoners do not abandon their Constitutional rights while incarcerated. *Bell v.*  
15 *Wolfish*, 441 U.S. 520, 545 (1979). Prison officials, however, may impose some  
16 limitations on those rights in order to achieve certain goals like safety and security. See  
17 *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 348 (1987). When a regulation implicates a  
18 prisoner's constitutional rights, the court must determine whether the regulation is  
19 reasonably related to legitimate penological interests." *Turner v. Safley*, 482 U.S. 78, 89  
20 (1987). In analyzing the legitimacy of regulation of a prisoners' religious expression, the  
21 court is instructed to afford appropriate deference to prison officials, "who are actually  
22 charged with and trained in the running of the particular institution under examination."  
23 *O'Lone*, 482 U.S. at 349 (quoting *Bell*, 441 U.S. at 562).

24                 An analysis under *Turner* employs the following factors: (1) "there must be a  
25 'valid, rational connection' between the prison regulation and the legitimate  
26 governmental interest put forward to justify it;" (2) "whether there are alternative means  
27 of exercising the right that remain open to prison inmates;" (3) "the impact  
28 accommodation of the asserted constitutional right will have on guards and other

1 inmates, and on the allocation of prison resources generally;" (4) the "absence of ready  
 2 alternatives" and "the existence of obvious, easy alternatives." *Turner*, 482 U.S. at 89-91.  
 3 This first factor is essential to the policy's validity. *Walker v. Sumner*, 917 F.2d 382, 385  
 4 (9th Cir.1990). The *Walker* court further explained the prison authorities' burden in  
 5 showing a valid rational connection: "[T]hey must first identify the specific penological  
 6 interests involved and then demonstrate both that those specific interests are the actual  
 7 bases for their policies and that the policies are reasonably related to the furtherance of  
 8 the identified interests. An evidentiary showing is required as to each point." *Id.* at 386

9           **A. Rational relation to legitimate interest**

10           Defendants argue that Johnson was prevented from attending Jum'ah because  
 11 he was classified as a Level 3 high risk inmate and was serving disciplinary sanctions.  
 12 (Dkt. no. 57 at 9.) ESP's policy does not allow these types of inmates to participate in  
 13 group religious services at the facility's chapel. Defendants assert the reason for this  
 14 policy is to maintain safety and security at ESP. (*Id.*) In support, Defendants offer  
 15 declarations from Tasheena Sandoval, a caseworker at ESP, and Harold "Mike" Byrne,  
 16 as associate warden. (Dkt. no. 57-1 ¶¶ 9-13; dkt. no. 57-2 ¶¶ 8-17.) Sandoval specifically  
 17 declared that "the basis for limiting Level 3 inmates and inmates serving disciplinary  
 18 sanctions from participating in group religious services is to minimize opportunity for  
 19 violence by inmates who have demonstrated behavior issues which directly jeopardize  
 20 institutional safety and security." (Dkt. No. 57-1 ¶ 13.) Byrne similarly declared that  
 21 "Level 3 inmates are not allowed direct access to the religious Chapel's congregational  
 22 services due to safety and security risks posed to the institution." (Dkt. No. 57-2 ¶ 12.)

23           The Court finds that these declarations support the claims that the policy of not  
 24 allowing Level 3 inmates to attend group religious services is 1) actually based on  
 25 security and safety concerns and 2) rationally related furthering the prison's security and  
 26 safety interests. Cf *Solomon v. Michigan Dep't of Corr.*, No. 2:10-CV-320, 2012 WL  
 27 892486, at \*4 (W.D. Mich. Feb. 17, 2012) (report and recommendation adopted), 2012  
 28 WL 892478 (W.D. Mich. Mar. 14, 2012) (affidavit from chaplain explaining that

1 scheduling conflicts prevented certain religious services from being held supported  
 2 finding that policy regarding religious services was rationally related to security and  
 3 scheduling interests).

4       The Court disagrees with the Magistrate Judge's finding that the first *Turner* factor  
 5 involves genuine disputes of material facts. Though it is true that Johnson has alleged  
 6 that Level 3 inmates are treated the same as Level 1 inmates in many respects, this  
 7 does not undermine the rationale for ESP's policy of preventing inmates whom ESP has  
 8 categorized as prone to violence from joining other inmates in group religious services.  
 9 See *Friedman v. Arizona*, 912 F.2d 328, 332–33 (9th Cir.1990) (finding evidence  
 10 concerning anticipated problems, even though no actual problems arose from the  
 11 prisoner's conduct, sufficient to satisfy *Turner's* first factor); Cf. *Clark v. Small*, No.  
 12 09CV1484 L JMA, 2011 WL 2004132, at \*6 (S.D. Cal. May 23, 2011) (temporary  
 13 suspension of Muslim inmates' ability to congregate daily during Ramadan after riot was  
 14 rationally related to goals or maintaining order and security).

15       Johnson's claims that he was a model inmate and was only classified as Level 3  
 16 because he could not take a job due to his medical status are relevant to other parts of  
 17 his action and other *Turner* factors, but they are not relevant to the question of whether  
 18 prohibiting Level 3 inmates from attending group religious services is rationally related to  
 19 the security and safety of ESP.

20       The Court finds that Defendants have shown that the policy in question is  
 21 rationally related to legitimate government interests. Therefore, the first *Turner* factor  
 22 weighs in Defendants' favor.

23           **B. Alternative means to exercise right**

24       The second *Turner* factor requires the court to look at whether there are  
 25 "alternative means of exercising the right [that] remain open to prison inmates." *Turner*,  
 26 482 U.S. at 89-90. In *O'Lone*, the Supreme Court confirmed that there were no  
 27 alternative means of attending Jum'ah, as the Muslim religion demands that it occur at a  
 28 particular time. *O'Lone*, 482 U.S. at 351. Nonetheless, the Supreme Court pointed out

1 that this requirement makes it difficult for prison officials to assure every Muslim inmate  
 2 can attend. *Id.* The Supreme Court declared: “While we in no way minimize the central  
 3 importance of Jum’ah to respondents, we are unwilling to hold that prison officials are  
 4 required by the Constitution to sacrifice legitimate penological objectives to that end.” *Id.*  
 5 at 351-52. As a result, the court instructed that an inquiry should be made as to “whether  
 6 the inmates were deprived of ‘all means of expression.’” *Id.* at 352 (citing *Turner*, 482  
 7 U.S. at 92. The court determined it was appropriate to examine whether the inmates  
 8 “retain the ability to participate in other Muslim religious ceremonies,” and found that the  
 9 record demonstrated the inmates were not “deprived of all forms of religious exercise,  
 10 but instead freely observe a number of their religious obligations.” *Id.* The record  
 11 revealed that the inmates freely observed many of their religious obligations, including  
 12 the right to congregate for prayer outside of working hours, access to an imam, the  
 13 delivery of different meals when pork was served in the prison, special arrangements  
 14 during the month-long observance of Ramadan with a period of fasting and prayer. *Id.*

15       Johnson argues that, while he was allowed to pray in his cell, Defendants denied  
 16 him any other opportunities to practice his religion. (Dkt. no. 65 at 10.) He also states  
 17 that he was denied the use of scented oils, access to Halal meals, the thirty-day  
 18 Ramadan feast, the Eid-al-Fitr feast, and Taleem classes. (Dkt. no. 65 at 31.)

19       Defendants failed to address Johnson’s claims that he was denied all other  
 20 means of practicing his religion besides being allowed to pray in his cell in their reply  
 21 brief. Instead, they now offer several pieces of evidence suggesting that Johnson had  
 22 access to an imam, oils, an appropriate diet, an opportunity to participate in Ramadan,  
 23 and the opportunity to purchase additional food for Eid al-Adha. (Dkt. nos. 81-1; 81-2;  
 24 81-3; 81-4.)

25        “[A] district court has discretion, but is not required, to consider evidence  
 26 presented for the first time in a party’s objection to a magistrate judge’s  
 27 recommendation.” *United States v. Howell*, 231 F.3d 615, 621 (9th Cir. 2000). Because  
 28 considering the evidence in this case will not ultimately affect the outcome of the

1 decision to deny Defendants' Motion, the Court will consider this newly provided  
2 evidence. The parties have presented conflicting evidence about whether Johnson had  
3 access to alternative ways to practice his religion. Therefore, the Court finds that there is  
4 a genuine dispute of material facts as they relate to the second *Turner* factor.

5 **C. Impact on others**

6 The third factor identified by *Turner* is the impact accommodating the right at  
7 issue would have on other inmates, prison personnel, and the allocation of resources at  
8 the facility. *Turner*, 482 at 90. In *Shakur*, the Ninth Circuit held that conclusory assertions  
9 that an accommodation would be too burdensome are insufficient. *Shakur*, 514 F.3d at  
10 887.

11 The Magistrate Judge found that Defendants had not provided specific evidence  
12 about what sort of additional resources would be necessary if Level 3 inmates were  
13 allowed to attend Jum'ah. (Dkt. no. 76 at 13.)

14 Defendants are correct to argue that the relevant inquiry is not how many Level 3  
15 inmates would request to attend Jum'ah, but rather how many would request to attend  
16 any group prayer service at the prison's chapel. (Dkt. no. 81 at 7.) However, they have  
17 still failed to present sufficient evidence for the Court to make a determination, even  
18 under this broader framework. The Court has no basis for determining how many Level 3  
19 inmates would request to attend group services, how often would such request be made,  
20 and how much additional work would be created for staff. Therefore, the Court agrees  
21 with the Magistrate Judge's assessment — there is a genuine question of material fact  
22 remaining with respect to this factor.

23 **D. Alternatives**

24 The last factor the Court considers is the "absence of ready alternatives" and "the  
25 existence of obvious, easy alternatives" to precluding Level 3 inmates like Johnson from  
26 attending group religious services. *Turner*, 482 U.S. 90. The Magistrate Judge found a  
27 factual dispute in regards to this factor as well. This Court agrees.

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1       The fact that the only impediment allegedly preventing Johnson from moving to  
2 Level 1 from Level 3, and being eligible to attend Jum'ah, was his inability due to his  
3 medical status to take a job in culinary or yard labor, indicates the prison may be able to  
4 use a more precise criteria for determining whether an inmate is eligible to attend  
5 religious services. The Court agrees that a factual dispute remains in regards to the final  
6 *Turner* factor.

7 **V. CONCLUSION**

8       It is therefore ordered, adjudged and decreed that the Report and  
9 Recommendation of Magistrate Judge William G. Cobb (dkt. no. 76) is accepted and  
10 adopted consistent with this Order. The Court finds that Defendants have presented  
11 evidence sufficient to show that the first *Turner* factor weighs in their favor. The Court  
12 cannot resolve the remaining factors due to outstanding disputed issues of material fact.

13       It is therefore ordered that Plaintiff's Motion for Summary Judgment (dkt. no. 62)  
14 is denied.

15       It is further ordered that Defendants' Motion for Summary Judgment (dkt. no. 57)  
16 is granted, only insofar as Plaintiff seeks damages against Defendants in their official  
17 capacities, and is denied in all other respects.

18                     DATED THIS 30<sup>th</sup> day of March 2016.

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21                     MIRANDA M. DU  
22                     UNITED STATES DISTRICT JUDGE  
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